**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 989 of 1995**
**With**
**CRIMINAL APPEAL No. 993 of 1995**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE MD SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**DHIRUBHA RAMUBHA CHAVDA - Appellant(s)**
**Versus**
**STATE OF GUJARAT - Opponent(s)**

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**Appearance :**

**CRIMINAL APPEAL NO. 989 OF 1995**

MR KJ SHETHNA for Appellant(s) : 1,
MR LR PUJARI PUBLIC PROSECUTOR for Opponent(s) : 1,

**CRIMINAL APPEAL NO. 993 OF 1995**

MR AD SHAH for Appellant(s) : 1-2
MR LR PUJARI PUBLIC PROSECUTOR for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE MD SHAH**

**Date : 18/10/2007**

**ORAL JUDGMENT**

1.0 These appeals are directed against the judgment and order of the learned Special Judge, Ahmedabad dated 7th September, 1995 passed in Special Case No.7 of 1992 whereby the trial Court convicted original accused Nos.1 to 3-the appellants, herein, for the offence punishable under Section 7 of the Prevention of Corruption Act read with Section 34 of the Indian Penal Code and sentenced them to undergo Rigorous Imprisonment for a period of one year and six months and to pay fine of Rs.1000/- by each of them and in case of default to undergo further Simple Imprisonment for a period of three months. The accused Nos.1 to 3 were also convicted by the trial Court for the offence punishable under Section 13(2)of the Prevention of Corruption Act and were sentenced to undergo Rigorous Imprisonment for a period of one year and six months and to pay fine of Rs.1000/- by each of them and in case of default to undergo further Simple Imprisonment for a period of three months.

The aforesaid sentences were ordered to run concurrently. Set off for the period of sentence, if any, undergone was also ordered

2.0 The brief facts of the case are that one Mr. Kantibhai Kikabhai Rathod-Investigating Officer-P.W.-3, herein, received definite information on 06.12.1990 that some police personnels are illegally collecting money, in the name of 'entry fee' without following any procedure, from the drivers of the heavy vehicles entering into Ahmedabad city through Pirana Road Tolnaka, Narol Circle, Behrampura Dhor Bazar, Behrampura chowki etc. area. On the basis of the said information, P.W.-3 decided to arrange a trap on 07.02.1990. Hence, P.W.-3 summoned two employees from Public Works Department for acquiring their services as Panchas during the aforesaid trap.

2.1 On arrival of 'panchas' on 07.02.1990, they were introduced with the members of the raiding party. Then, panchas were informed about

the facts for arranging trap. Thereupon, one Mr. Prahladbhai Makwana, Police Constable put the bottle of anthracene powder, ultraviolet lamp, a piece of cloth, blank paper and soap etc. in an office bag and a panchnama was drawn to the aforesaid effect in the presence of panchas and the panchas signed it.

2.2 In pursuance of that members of the raiding party along with panchas left for Janpath Hotel on Sarkhej High-way. On reaching there, they stood waiting for some time, looking for a heavy-vehicle. At that time, they saw a truck coming from the direction of Bavla, driven by P.W.-2. P.W.-3, hence, gave signal to P.W.-2 to halt the truck. P.W.-3, thereupon, gave his introduction to P.W.-2 and inquired from P.W.-2 about the truthfulness of the information received by him about the collection of money by the police personnels illegally in the name of 'entry fee' and P.W.-2 told P.W.-3 that the same was true. P.W.-3, thereafter, informed P.W.-2 about arranging of a trap, to which P.W.-2 gave

his consent voluntarily. There was also another person with P.W.-2 named Kalubhai Pransukhbai who was co-driver. Thereupon, P.W.-2, his co-driver and members of the raiding party were introduced to one another. Then, a search of P.W.-2 was made and, except, an amount of Rs.80/- and a bunch of keys from the trouser pocket of P.W.-2, nothing else was found. Thereupon, P.W.-3 produced bribe amount of Rs.150/. Mr. Prahladbhai, Police Constable, then, carried out the experiment with regard to use of anthracene powder on the said currency notes under normal light and ultraviolet light. On completion of the necessary statutory procedures, amount of bribe i.e. the tainted currency notes were put in the pocket of shirt of P.W.-2 and he was instructed not to touch the said amount until the demand was made. Thereafter, Mr. Prahladbhai, burnt the piece of paper and cloth used in smearing the anthracene powder on the bribe amount and washed his hands with soap. Then, Panch No.-1 along with Mr. Desai, P.S.I. and a few other members of the raiding party were instructed to sit in the cabin

along with driver i.e. P.W.-2. P.W.-2 was instructed to drive the vehicle towards Pirana Tolnaka, Dhor Bazar and was also told that if any police personnel stops the vehicle, to talk with them patiently and give the amount of bribe as and when demand is made. P.W.-2 was also instructed to give signal to the members of the raiding party sitting in the cabin on giving the amount of bribe. P.W.-1 was instructed to witness the transaction that may take place between P.W.-2 and the unknown police personnels. Then, aforesaid procedures came to be recorded by way of a 'Panchnama'.

2.3 Thereupon, the said truck along with P.W.-1 and the members of the raiding party started proceeding towards Pirana Tolnaka followed by P.W.-3 and other members of the raiding party in a private vehicle. When they reached near Pirana Circle a few persons looking like police personnels were standing there. One of them gave signal to stop the vehicle to P.W.-2, and hence, P.W.-2 stopped the vehicle. In

pursuance of that some conversation took place between P.W.-2 and the said person and then the said person demanded an amount of Rs.150/- in the name of 'entry fee' from P.W.-2. P.W.-2, initially, said that he had only Rs.100/- with him. However, when the said person insisted for Rs.150/-, P.W.-2 gave the amount of Rs.150/- treated with anthracene powder to the said person. P.W.-2, then, as per the pre-arrangement gave signal to the members of the raiding party. The accused persons were then surrounded by the members of the raiding party immediately. In the meantime, P.W.-3 reached to the spot along with other members of the raiding party and Panch No.2. Then, P.W.-3 gave his introduction to the accused persons. Thereafter, necessary statutory procedures i.e. experiment of ultraviolet light and normal light for ascertaining presence of anthracene powder on currency notes, preparation of seizure memo etc., were completed and trap Panachnama was drawn to the aforesaid effect.

2.4 Thereupon, a complaint was filed by P.W.-

3 against all the accused persons which came to be registered as C.R. No.20 of 1990 and the investigation was carried out by the A.C.B., Ahmedabad. After obtaining sanction, charge-sheet was submitted against the accused persons before the trial Court. The trial Court framed, read over and explained charges under Section 7 and 13(2) of the Prevention of Corruption Act and Section 34 of the Indian Penal Code. However, the accused persons did not plead guilty to the charges and claimed to be tried. The trial Court, then, heard all the parties and convicted and sentenced the accused persons as stated in Para-1 of the judgment. Hence, the present appeal.

3.0 Heard, Mr. Shethna, learned Counsel for original accused No.1, Mr. Shah, learned Counsel for original accused Nos.2 and 3 and Mr. Pujari, learned A.P.P. for respondent-State.

4.0 Learned Counsels for the appellants have submitted that the trial Court has committed an error by placing reliance on the evidence of

P.W.-3 and P.W.-4, for recording conviction of the appellants, who are interested witnesses.

4.1 Learned Counsels have further submitted that the trial Court ought to have taken into consideration the fact that the material independent witnesses i.e., P.W.-1 and P.W.-2 neither identified the accused persons nor supported the case of the prosecution on the aspect of 'demand' and 'acceptance' of bribe.

4.2 Learned Counsels have submitted that the trial Court has committed an error in coming to the conclusion that the presence of the accused persons at the place of incident, at the relevant point of time, was with criminal intention of collecting illegal gratification in the name of 'entry fee'.

5.0 On the contrary, Mr. Pujari, learned APP has supported the case of the prosecution and has stated that after taking into consideration all the facts and circumstances of the case and the

documents placed on record i.e. Complaint (Exhibit-19), Trap Panchnama(Exhibit-15) and Seizure Memo (Exhibit-18) as well as the oral evidence of P.W.-3 (Exhibit-17) and P.W.-4 (Exhibit-26) the trial Court has passed the order of conviction, and hence, no interference is called for by this Court.

6.0 It was the case of the prosecution before the trial Court that on 07.12.1990 accused Nos.1 to 3, were standing on the road near Pirana Circle with common intention of extorting money from the drivers of the heavy-vehicle coming into the city of Ahmedabad and sharing that common intention they extorted an amount of Rs.150/-, being illegal gratification, in the name of 'entry fee' from P.W.2 and at that time they were caught red-handed. In support of its case, the prosecution has examined four witnesses i.e. Dahyabhai Bababhai Solanki-P.W.1- at Exhibit-14, Bansilal Ganjuram Dave-P.W.-2 at Exhibit-16, Kantilal Kikabhai Rathod-P.W.-3 at Exhibit-17 and Amrutbhai Lallubhai Desai-P.W.-4 at Exhibit-26

and has placed reliance on several documentary evidence i.e., Complaint(Exhibit-19), Trap 'Panchnama' (Exhibit-15) and Seizure Memo(Exhibit-18).

6.1 P.W.-1 in his deposition has stated that on 06.12.1990, on receiving instructions from his superior officer, he(P.W.-1)along with Panch No.2 went to the office of the A.C.B., Ahmedabad and there they met P.W.-3. P.W.-3 informed them about the trap to be arranged on 07.12.1990.

6.2 On their reaching office of A.C.B. on 07.12.1990, P.W.-1 and Panch No.2 were informed about the facts for arranging the trap. Thereafter, one police constable put the bottle of anthracene powder, blank papers, piece of cloth etc., which are necessary for carrying out a trap, in an office bag. After drawing a 'Panchnama' to the aforesaid effect, the raiding party left for Janpath Hotel.

6.3 After reaching Janpath Hotel, they waited

there for some time for a heavy vehicle and at that time they saw a truck coming from the direction of Bavla, being driven by P.W.-2. P.W.-3, hence, gave signal to halt the said truck. P.W.-3 then inquired from P.W.-2 about the truthfulness of the information received by him and P.W.-2 said that the same was true. P.W.-3, then, informed P.W.-2 about the arranging of the trap in connection with the aforesaid matter and P.W.-2 gave his consent to cooperate in the said trap. In pursuance of that statutory procedures of experiment of normal light and ultraviolet light using anthracene powder on the currency notes etc., were carried out and the same were recorded in second part of preliminary 'Panchnama'.

6.4 After completing all statutory procedures, P.W.-2 along with P.W.-1 and a few members of the raiding party proceeded in his truck towards Pirana Circle followed by P.W.-3 and other members of the raiding party in a private vehicle. When they reached near Pirana

Circle, they found several police personnels standing on the road. One of the said police personnels gave signal to halt the truck and then they came near the truck. Then, some conversation took place between P.W.-2 and the said police personnel. P.W.-1 has stated that he could not listen the said conversation between P.W.-2 and the said police personnel. But, he admits that the said police personnel demanded an amount of Rs.150/- from P.W.-2, and hence, P.W.-2 gave the bribe amount to the said police personnel.

6.5 It may be noted that, during the trial, P.W.-1 failed to identify accused No.1 as the person who had demanded and accepted the amount of bribe from P.W.-2 as well as other two persons who were present there at the relevant point of time. P.W.-1 also did not support the case of the prosecution in regard to the aspect of experiment of normal light and ultraviolet light to ascertain the presence of anthracene powder after the seizure of amount of bribe from accused No.1 as well as seizure of shirt put on by accused

No.1 at the time of offence. Hence, P.W.-1 was declared hostile by the trial Court and trial Court gave permission to the prosecution to cross-examine him (P.W.-1).

6.6 In his cross-examination also P.W.-1 did not support the case of prosecution on vital aspects i.e., experiment of normal light and ultraviolet light with regard to presence of anthracene powder on the hands and shirt put on by accused No.1 as well as 'demand' and 'acceptance' of bribe by accused No.1. Apart from that P.W.-1 failed to recognize any of the appellants, as accused persons, who were present in the Court. Hence, from the deposition as well as cross-examination of P.W.-1, it does not transpire that the appellants, herein, are the accused persons.

6.7 So far as evidence of P.W.-2 are concerned, P.W.-2 also did not support the case of the prosecution on vital aspects.

6.8 P.W.-2 in his deposition has stated that on the day of alleged incident he had gone towards highway in the early morning to fill up the diesel in his truck since there was shortage of diesel at that point of time and while returning to the city when he came near Janpath Hotel, P.W.-3 gave him signal to halt the truck. P.W.-3, then, inquired from him(P.W.-2) about the truthfulness of the information received by him(P.W.-3) in regard to illegal collection of money by the police personnels from the drivers of heavy-vehicles. P.W.-2 has further stated that P.W.-3, then, informed him about the facts for arranging a trap and he(P.W.-2) voluntarily agreed. In pursuance of that P.W.-3 took out an amount of Rs.150/-, to be given as bribe, from his pocket. It may be noted that, here, P.W.-2 has stated that he does not know as to whether any experiment under normal light and ultraviolet light using anthracene powder was done on the said bribe amount or not or as to whether any 'Panchnama' was drawn or not. P.W.-2 has further stated that then P.W.-3 gave him the amount of

bribe and he (P.W.-2) himself put the said amount in the pocket of his shirt. Hence, the aforesaid statements made by P.W.-2 creates a doubt that as to whether before setting off for carrying out the actual raid, all the statutory procedures were properly completed or not.

6.9 P.W.-2 has further stated that, thereupon, they started proceeding towards Pirana Circle along with P.W.-1 and members of raiding party being followed by P.W.-3, Panch No.2 and other members of the raiding party in a private vehicle and when they reached near Pirana Circle they saw several police personnels standing on road. Thereupon, one of the police personnels, gave signal to P.W.-2 to halt the truck and came near the truck followed by others. One of them, then, stood on the footrest of the truck and asked P.W.-2 whether he has brought liqour? In reply to that P.W.-2 told that the truck was empty. Hence, the said police personnel got down and took a search of the truck. P.W.-2 states that on account of such a conduct of that person

he was convinced that the said person was a policeman, and hence, he took out bribe amount from his pocket and put it in the pocket of shirt of the said person and then as per the pre-arrangement gave signal to the members of the raiding party.

6.10 In this way, P.W.-2 also does not support the case of the prosecution on the aspect of 'demand' and 'acceptance' of bribe. On the contrary, P.W.-2 states that he-himself without being asked for money by the said police personnel, had voluntarily put the amount of Rs.150/- in the pocket of the said person.

6.11 P.W.-2 further states that, thereafter, the members of the raiding party and P.W.-1 got down from the truck and surrounded the accused persons and after a few minutes P.W.-3 also reached the spot along with other members of the raiding party. P.W.-3, then, inquired something from P.W.-1. P.W.-2 has submitted that he could not say as to what was the subject of their

conversation, since according to him, P.W.-3 did not make any inquiry from P.W.-1 in his(P.W.-2's)presence. Then, the said police personnel was taken to Behrampura police station. P.W.-2 has stated that at Behrampura Police Station, since he was standing out-side the police station, he does not know as to what happened in the police station, and therefore, he cannot say as to whether any experiment of normal light and ultra violet light with regard to use of anthracene powder was done or not or as to whether P.W.-3 recovered the amount of bribe from the said police personnel or not. P.W.-2 has also stated that prior to carrying out trap he did not sign any document at Janpath Hotel and that after the completion of the said trap his signature were taken on a ready-made trap 'Panchnama' at police station. P.W.-2 denied that the said trap 'Panchnama' was prepared in his presence and just like P.W.-1, he(P.W.-2) also failed to identify any of the appellants as the accused persons, and hence, he too was declared hostile by the trial Court.

6.12 In his cross-examination P.W.-2 stuck to the version given by him in his deposition that he had not witnessed any experiment under normal light and ultraviolet light using anthracene powder etc., at Janpath Hotel and stated that the 'Panchnama' at Janpath Hotel was not prepared in his presence. P.W.-2 further stated that the Panchanama at police station was not prepared in his presence and that his signatures were taken on a ready-made 'Panchnama'. P.W.-2 also failed to identify any of the appellants-who were present in the Court, as the accused persons.

6.13 P.W.-2, in his cross-examination, has further stated that since he was knowing P.W.-3 even prior to the alleged incident, he had given consent to cooperate in the said trap. The said fact creates doubt about the genuineness of selection of panchas and compliance of necessary statutory procedures by the officials of A.C.B., Ahmedabad. Hence, from the evidence of P.W.-2 also it cannot be established beyond reasonable

doubt that the appellants, herein, are the original accused persons.

6.14 So far as the evidence of P.W.-3 are concerned, he has strongly supported the case of the prosecution. However, he has fairly conceded that he-himself had not seen the transaction between P.W.-2 and accused No.1 since he had arrived at the scene of offence later i.e., after the members of the raiding party surrounded the accused persons. Hence, evidence of P.W.-3 cannot be said to be reliable in regard to the aspect of 'demand' and 'acceptance' of bribe.

6.15 So far as the evidence of P.W.-4 who was present in the said truck at the time of offence in question is concerned, he failed to identify accused No.2 and that after a few attempts he could identify accused Nos.1 and 3, only.

6.16 In a case where the evidence of the panch witnesses do not inspire full confidence and on appreciation of the evidence, it transpire that

the panchas were known to the Investigating Officer and, more particularly, when the panch witnesses do not support the case of the prosecution on vital aspect i.e. following of statutory procedures for carrying out a trap by the officials of A.C.B. as well as 'demand' and 'acceptance' of bribe by the accused persons and, more particularly, when the panch witnesses fail to identify the accused persons, it cannot be said that the prosecution has proved its case beyond reasonable doubt.

6.17 In the case on hand, P.W.-1 and P.W.-2 who are independent witnesses have not supported the case of the prosecution on the aspect of following of necessary procedures before carrying out a raid as required under the statute as well as on the aspect of 'demand' and 'acceptance' of bribe by accused No.1. Apart from that both the independent witnesses who are not at all concerned with the success of the trap have failed to identify any of the appellants, herein, as the accused persons. Moreover, P.W.-4, who

was one of the members of the raiding party and was present in the cabin of the driver, at the time of alleged offence, also could not identify accused No.2. The said fact creates serious doubt about the involvement of the appellants in the offence in question. As regards the evidence of P.W.-3 is concerned, though, he(P.W.-3) has identified all the appellants as the accused persons, he has admitted that he had not witnessed the transaction that took place between P.W.-2 and accused No.1. Therefore, the evidence of P.W.-3 cannot be said to be reliable and trustworthy in regard to the aspect of 'demand' and 'acceptance' of bribe is concerned. Hence, when there is serious doubt about the involvement of the appellants in the alleged offence and, especially, when the independent witnesses i.e. P.W.-1 and P.W.-2 do not support the case of the prosecution on the aspect of 'demand' and 'acceptance' of bribe by the accused No.1 and when the said independent witnesses have failed to identify the appellants, herein, as accused persons, it cannot be said that the prosecution

has proved guilt of the appellants beyond reasonable doubt. Besides that when the prosecution has not examined any other witnesses in support of its case and when it is not in a position to show that the presence of the appellants at certain place was not as a part of their duty but only with a view to fulfill their common intention of extorting money illegally, from the drivers of the heavy-vehicles in the name of 'Entry Fee', the appellants deserve to be given benefit of doubt.

6.18 In view of the above discussion and taking into consideration the facts and circumstances of the case and the evidence available on record, I have no hesitation in holding that the prosecution has failed to prove its case of 'demand', 'offer' and 'acceptance' beyond doubt, and hence, the appellants deserve to be given benefit of doubt.

7.0 In the result, both the appeals are allowed. The judgment and order of conviction and

sentence passed by the learned Special Judge, Ahmedabad dated 7th September, 1995 passed in Special Case No.7 of 1992 is hereby quashed and set aside. The appellants, herein, are acquitted in connection with the offences in question. The bail-bonds of the appellants stand canceled.

(M.D. Shah,J.)

Umesh/